

Application No. 10/647,729
Amendment "A" dated May 24, 2005
Reply to Office Action mailed January 24, 2005

REMARKS

Reconsideration and allowance of the above-identified application are now respectfully requested in view of the amendments and remarks set forth herein. Claims 1-20, 22-32, 35-38 and 40-44 are pending, wherein claims 14, 15, 17, 20, 21, 32, 35-38 and 44 have been amended, claims 45-62 have been newly added, and claims 33, 34 and 39 have been canceled.

In the first Office Action, the Examiner allowed claims 11-19, objected to claims 4, 8-10, 20-31, 34-37 and 39-43, and rejected claims 1-3, 5-7, 32, 33, 38 and 44. Applicant will address the Examiner's objections and rejections in the order set forth by the Examiner in the first Office Action.

The Examiner objected to claim 20 on the basis that the phrase "the electronic resistance selector" lacks positive antecedent basis, and objected to claim 21 as failing to further limit the subject matter of the previous claim. By this paper, applicant has amended claim 20 to remove the reference to "electronic", correct the article preceding the phrase "resistance selector system" and, thus, resolve the antecedent basis objection. Applicant respectfully submits that amended claim 20 is patentable over the art of record for the reasons discussed below in relation to claims 1-3, 5-7 and 44. Applicant has also amended claim 21 to correct the article preceding the phrase "electronic resistance selector system." Furthermore, in view of the amendment to claim 20, the scope of dependent claim 21 is no longer coextensive with, but further limits, claim 20. In view of these amendments, Applicant respectfully submits that claims 20-31 are now in allowable form.

The Examiner rejected claims 1-3, 5-7 and 44 under Section 102(b) as being anticipated by U.S. Patent No. 5,123,886 to *Cook*. Reconsideration and withdrawal of this rejection is respectfully requested in light of the following comments and observations. In addition, in view

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of the amendment to claim 20, applicant will also address the *Cook* reference in relation to amended claim 20. Independent claim 1 includes the following element: "a variable resistance system linked to the single resilient elongate rod, the variable resistance system being configured to utilize the resilient elongate rod to provide a variable amount of resistance for use in exercise." Similarly, independent claim 20 provides: "a resistance selector system cooperating with the single resilient elongate rod, the resistance selector system being configured to vary the amount of resistance provided by the single resilient elongate rod during exercise." Finally, independent claim 44 also includes the following element: "a variable resistance system linked to the cable and pulley system to utilize resistance from the resilient elongate rod to provide a variable amount of resistance for use in exercise." In rejecting the claims over *Cook*, the Examiner stated:

Cook further teaches the variable resistance system As broadly construed, Cook teaches a lever arm (24) wherein the mechanical advantage provided by [sic] the lever arm can be varied to change the amount resistance needed to flex the resilient elongate rod. (Lever arm can be rotated, thereby affecting the angle at which the cable is pulled, thereby increasing or decreasing the resistance).

Office Action at pages 2-3. Applicant respectfully points out that the Examiner's interpretation of the *Cook* reference is inconsistent with its express and unambiguous teachings. Attention is directed to column 3, lines 41-46 (emphasis added) of *Cook*, which clearly states: "Because axis 26 about which the swing arm pivots is aligned with pulleys 22, the distance between pulleys 22 and pulleys 23 does not change when the position of the handles is adjusted, *and the tension in*

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the cables is independent of the position of the handles." Further, applicant would respectfully point out that the tension in the cables (which "is independent of the position of the handles"), and not the angle at which the cable is pulled, affects the resistance. In other words, because the distance between pulleys 22 and 23 remains constant, there is no change in the length of the lever arm, there is no variation in the mechanical advantage achieved and, thus, there is no variation in the effective resistance (*i.e.*, "the tension in the cables is independent of the position of the handles"). Furthermore, at column 3, lines 33-37, *Cook* plainly teaches that the mechanism for varying the resistance of the exercise machine is achieved by the selective attachment of the cables to the desired number of rods (*i.e.*, "cables 17 are connected to the rods which provide the desired resistance"), whereas the pivoting swing arm (24) merely permits the position of the crossbar (28) and the hand grips (29) to be adjusted to the proper height for the exercise and the person using the machine. Because *Cook* does not teach or suggest the use of a variable resistance system configured to utilize the resilient elongate rod(s) to provide a variable amount of resistance, applicant respectfully submits that claims 1-10, 20-31 and 44 are allowable over the art of record.

Next the Examiner rejected claims 32-33 as being anticipated by U.S. Patent No. 4,620,704 to *Shifferaw*. While dependent claims 34-37 were objected to as being dependent upon a rejected base claim, the Examiner indicated that claims 34-37 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. By this paper, applicant has amended claim 32 to include the additional limitation previously contained in allowable dependent claim 34, and then canceled dependent claim 34. Accordingly, applicant respectfully submits that claims 32, 33 and 35-37 are allowable over the art of record.

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The Examiner rejected claim 38 as being anticipated by U.S. Patent No. 6,113,522 to *Fontenot*. While dependent claims 39-43 were objected to as being dependent upon a rejected base claims, the Examiner indicated that claims 39-43 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. By this paper, applicant has amended claim 38 to include the additional limitation previously set forth in allowable dependent claim 39, and then canceled dependent claim 39. Accordingly, applicant respectfully submits that claims 38 and 40-43 are allowable over the art of record.

Claims 14, 15, 17, 20, 37 and 44 have been amended to correct typographical errors and/or to provide proper antecedent basis, and are not intended to be limiting.

Finally, new claims 45-62 have been added by this amendment. Independent claim 45 includes the limitation of "an electronic variable resistance system linked to the at least one resilient elongate rod and being configured to utilize the at least one resilient elongate rod to provide a variable amount of resistance for use in exercise." For the reasons discussed above in relation to claims 1-10, 20-31 and 44, applicant also respectfully submits that newly added claims 45-62 are also patentable over the art of record.


In view of the foregoing amendments and remarks, applicant submits that the application is now in condition for allowance. Prompt favorable action is, therefore, courteously requested.

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In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 24th day of May, 2005.

Respectfully submitted,


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